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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/587,302

07/26/2006

Ralf Wnuk

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1609 7590 03/23/2010

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.

1300 19TH STREET, N.W.

SUITE 600

WASHINGTON,, DC 20036

EXAMINER

ANDERSON, DENISE R

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

03/23/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/587,302	Applicant(s) WNUK, RALF	
	Examiner Denise R. Anderson	Art Unit 1797	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 11-25.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Walter D. Griffin/
Supervisory Patent Examiner, Art Unit 1797

Continuation of 3. NOTE:

Applicant argues, "Claims 11-18 are rejected under 35 U.S.C, section 112, second paragraph as being indefinite. Relative to claim 11, the reference to 'output part' appears to be questioned. Such part refers to the driven part 54 described in the original and substitute specification. This objection is avoided by adding 'output part' to page 7 of the substitute specification." Applicant's Remarks, p. 8, lines 17-20.

The examiner responds that this creates a new issue of whether introducing a new part into the substitute Specification is (1) supported by both the original and substitute Specification and (2) overcomes the indefiniteness of the claim 11 limitation. The 112 rejection is addressed in paragraph 7 of the final rejection and is restated below.

Claim 11 recites the following limitation:

a drive being coupled to said receiving part to rotate said receiving part, including a rod-shaped drive part releasably connecting said first and second end parts and including a pneumatic motor producing alternating to and fro movements on an output part convertible into a constant drive movement in a drive direction of said drive part by a free wheel device.

The indefinite limitation starts from the word "and including a pneumatic motor."

There is no "output part" in either the original Specification or the substitute Specification. The "drive part" could be either Fig. 1, drive part 52 or Fig. 1, driven part 54. In the final rejection, the examiner interpreted the indefinite limitation to mean (1) the drive (Fig. 1, drive 34) has a pneumatic motor, as stated in the substitute Specification, p. 4, line 11 - and (2) the drive part (Fig. 1, drive 34) is coupled to the free wheel device (Fig. 1, free-wheeling device 56) with a driven part (Fig. 1, driven part 54), in keeping with the Specification's Fig. 1.

Continuation of 11. does NOT place the application in condition for allowance because: A new issue has been raised that requires further search and/or consideration. The remaining arguments put forth were previously addressed in the final rejection.